

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: John A. Russo
City Manager

Date: October 18, 2011

Re: Authorize the City Manager to Execute the Amendment to the
Associated Community Action Plan Joint Powers Authority

BACKGROUND

The Associated Community Action Program (ACAP) is a joint powers authority (JPA) with a governing board comprised of its member agencies, which includes Alameda County and twelve cities within its jurisdiction, including the City of Alameda. Because of financial and performance issues, it is necessary to close out all programs at the agency and limit liability to the members of the JPA. Ongoing obligations will primarily be administrative in nature. Therefore the ACAP Board is recommending approval of an amendment to the JPA that will limit future exposure for member agencies and change the Board representation to the City and County Managers in the County rather than the elected officials.

ACAP's purpose has been to administer programs and services for the low-income population through a variety of public and private funding sources. These programs included housing assistance, jobs training and education, and youth development services.

In February 2011, ACAP staff presented a number of concerns about management of the agency to the ACAP Governing Board. Significant financial and performance issues have given rise to the termination and layoff of ACAP staff. Management Partners was engaged to manage and implement a close out of ACAP. The general purpose is to close out ACAP with a minimum of expense while minimizing the ACAP members' liabilities from various sources such as disallowed grant costs. The JPA was last amended in 1995 and states that the members are liable for repayment of any misspent funds in the event that ACAP is unable to meet those obligations. This is based on California State law. An Ad Hoc Committee comprised of two City Managers and three City Attorneys have been guiding this work and the process.

All known grant obligations were closed out by September 30, 2011, or very soon thereafter. Current invoices are being processed, and older invoices are being cleared in the system or paid. An audit for 2010 is underway. Management Partners is in the

**City Council
Agenda Item #5-C
10-18-11**

process of identifying a third-party administrator to manage ongoing obligations. A recommendation will be forthcoming for approval by the new ACAP Governing Board.

DISCUSSION

Most of the ongoing obligations going forward will be administrative rather than policy oriented. There are several continuing obligations that ACAP cannot avoid, such as records retention, responding to lawsuits and claims, and paying for disallowed grant costs. Member agencies of a JPA are equally responsible for any expenses of the JPA. At the Interim Executive Director's direction, John Bakker of Meyers/Nave, City Attorney for the City of Dublin, prepared a JPA amendment that will limit future exposure for member agencies and delegate oversight to the County and City Managers of the member agencies rather than the elected officials. It will also delete requirements associated with grant programs and ACAP original purposes, such as the Community Action Board. Specifically, the amendment:

1. Restructures ACAP's powers to be consistent with its current "wind up" task (see Section I.C). This deletes all program activities and describes ACAP as a caretaker/close out organization.
2. Specifies that by entering into the agreement, none of the members are admitting that they were parties to the original JPA or that they are liable for the debts of ACAP (See Section VI.G). This limits member liabilities to programs prior to adoption of the amended JPA and limits subsequent liabilities to the close-out process.
3. Eliminates the Community Action Board and related actions. Without this change, the Governing Board would be required to continue appointing members to the CAB the CAB would be required to continue to hold quarterly meetings
4. Reconstitutes the Governing Board to be comprised of the CEO of each member agency and authorizes the CEO to send an alternate to meetings (See Section II. A.1). This is recommended since the remaining close-out activities will be administrative in nature.

The ACAP Board met September 15, 2011, and voted to recommend to their respective governing bodies that they approve the amendment to the ACAP Joint Powers Authority. The amendment, which has been reviewed and revised by the legal counsels of all the member agencies, is attached as Exhibit 1. The JPA requires that all members approve the amendment to the JPA for it to take effect.

FINANCIAL IMPACT

The City of Alameda has contributed \$100,385 towards the wind down of ACAP.

RECOMMENDATION

Authorize the City Manager to execute the amendment to the Associated Community Action Plan Joint Powers Authority.

Honorable Mayor and
Members of the City Council

October 18, 2011
Page 3 of 3

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa Goldman", with a long, sweeping horizontal line extending to the right.

Lisa Goldman
Assistant City Manager

Exhibit:

1. Amended and Restated Joint Powers Agreement of the Associated Community
Action Program

AMENDED AND RESTATED JOINT POWERS AGREEMENT
of the
ASSOCIATED COMMUNITY ACTION PROGRAM

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT is made and entered into this ___ day of ____ 2011 by and among the County of Alameda, a political subdivision of the State of California ("County"), and the cities of Alameda, Albany, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Piedmont, Pleasanton, San Leandro, and Union City, all of which are municipal corporations (collectively "Cities"). County and Cities are collectively referred to herein as the "Members."

RECITALS

1. County and Cities are apparent parties to that certain Joint Powers Agreement, dated July 12, 1994 (the "Original JPA"), which created the reformed joint powers agency designated as Associated Community Action Program, or ACAP.
2. The purpose of the reformed ACAP was to plan, develop, and administer programs under the federal Community Services Block Grant program (42 U.S.C. 9901 et seq.) and implementing state law.
3. For such purposes, ACAP had been designated as a Community Action Agency.
4. Due to significant financial issues, the Board of Directors of ACAP in the Spring of 2011 chose to terminate its participation in various state and federal program and to effectively "go out of business."
5. Since that time, ACAP's management, County, and Cities have been engaged in winding up its affairs, and the parties have found the current ACAP governance structure cumbersome for such purposes.
6. ACAP's management proposed that the Original JPA be amended to streamline the governance of ACAP so as to reflect the current need of ACAP's member agencies (i.e. County and Cities) to wind up ACAP's affairs as soon as possible.
7. In accordance with ACAP management's proposal, the parties now wish to amend and restate the Original JPA without affecting the continuing existence of ACAP.

AGREEMENT

I. ORGANIZATION

- A. Name of Agency. The Agency continued for the purpose of administering this agreement shall be designated as the Associated Community Action Program.
- B. Purpose of Agreement. The purpose of this agreement is to continue the existence of ACAP for the sole purpose of winding up its affairs.

**City Council
Exhibit to
Agenda Item #5-C
10-18-11**

C. Powers of ACAP. In furtherance of its purpose, ACAP is authorized to do all acts necessary for the exercise of its authority, including but not limited to any or all of the following:

1. To the extent necessary or appropriate for achieving the stated purposes of this agreement, consistent with Government Code Division 6, Chapter 5, Article 1, section 6500 et seq. and the provisions of this agreement, to exercise any power which is common to both Cities and County. All powers shall be exercised subject to such restrictions upon the manner of exercising such powers as are set forth in this agreement and as are imposed upon County in its exercise of similar powers, as provided in, and for the purposes of, Section 6509 of the Government Code of the State of California.

2. To wind up the affairs of ACAP;

3. To perform any contractual obligations of ACAP existing on September 30, 2011;

4. To make and enter contracts in its own name for the purposes of winding up ACAP's affairs;

5. To employ agents, including legal counsel, and employees for the purposes of winding up its affairs; provided, however, that effective October 1, 2011, ACAP shall have no employees;

6. To manage, maintain, hold or dispose of equipment, material, supplies and property;

7. To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and any governmental entity.

8. To sue or be sued in its own name.

II. GOVERNANCE

A. Governing Board.

1. Membership. The governing body of ACAP shall consist of a representative from each of the jurisdictions that are parties to this agreement ("the Governing Board"). The representative shall be the Member's chief executive officer. The Member's representative may, from time to time, appoint in writing an alternate to attend, participate and vote at any meeting of the Governing Board. The alternate shall serve at the pleasure of and in the manner determined by the Member's representative.

2. Voting. Each Member shall have one (1) vote. An action must receive a majority of votes from Members present in order to be passed. Actions of the Governing Board shall be by motion or resolution.

3. Quorum. The presence of representatives, or their alternates, representing a majority of the Members shall constitute a quorum for the transaction of business by the Governing Board, except that less than a quorum may adjourn from time to time. Votes shall be cast only in person and may not be cast by proxy.

4. Officers. The Governing Board shall elect a Chairperson, Vice Chairperson, and Secretary from among its members. The terms of office shall each be one (1) year, beginning in April of each year. The Chairperson shall preside at meetings of the Governing Board and perform such other duties as the Governing Board shall instruct. The duties of the Vice Chair and the Secretary shall be the usual and customary duties of such officers.

5. Meetings. All meetings of the Governing Board shall be held subject to the provisions of the California Public Meetings Law (the "Brown Act"), California Government Code Section 54950 et seq.

B. Powers of Board. The Governing Board shall be the administering agency of this Joint Powers Agreement, and, as such, shall be vested with the powers set forth, and shall execute and administer this Agreement in accordance with the purposes and functions provided, herein. Without in any way limiting the generality of the foregoing, the Governing Board may appoint an executive director to administer ACAP.

C. Community Action Board. As ACAP is not longer designated as a Community Action Agency under the Community Services Block Grant program, the Community Action Board is hereby dissolved.

III. INSURANCE

A. Insurance Requirements. ACAP shall maintain the insurance required by this Article in full force and effect at all times during the prosecution of the work and until the final completion and acceptance thereof.

B. Workers' Compensation and Employer's Liability Insurance. ACAP shall take out and maintain during the life of the Agreement Workers' Compensation and Employer's Liability Insurance for all of its employees engaged in work under the agreement. Should any work be sublet, the ACAP shall require the subcontractor similarly to provide Workers' Compensation and Employer's Liability Insurance, all in strict compliance with federal and state laws and to fully protect the Members from any and all claims arising out of occurrences on the work.

C. Public Liability Insurance. ACAP shall take out and maintain in the name of ACAP and Members during the life of the agreement, such Public Liability Insurance as shall protect itself, Members, officials, officers, directors, employees, and agents, from claims which may arise from operations under this Agreement, whether such operations be by itself, by Members, its officials, officers, directors, employees, and agents, and contractors, or by anyone directly or indirectly employed by any of them. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to

property, resulting from Members' or subcontractor's operations, use of owned or non-owned automobiles, products, and completed operations. The amount of insurance shall not be less than the following:

Single Limit Coverage applying to Bodily and Personal Injury Liability and Property Damage: \$1,400,000.00.

The following endorsements must be attached to the policy:

1. If the insurance policy covers on an "accident" basis, it must be changed to "occurrence."
2. The policy must cover personal injury as well as bodily injury.
3. The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property MUST BE ELIMINATED from the basic policy endorsements.
4. The policy must include a gross liability or severability of interests clause.
5. The Members must be named as additional insured under the coverage afforded. with respect to the work being performed under the amended agreement
6. An endorsement shall be provided which states that the coverage is PRIMARY INSURANCE and that no other insurance effected by the ACAP members will be called upon to contribute to a loss under this coverage.
7. Cancellation, non-renewal, or reduction in limits shall be sent to the ACAP members with at least thirty (30) days' notice.

D. Depositors' Forgery Coverage. ACAP shall also purchase depositors Forgery coverage in the amount of \$100,000.00.

E. Official Bond. The Executive Director is hereby required to file an Official bond in the amount of \$100,000.00.

IV. LIABILITY

A. In the event that judgment is rendered against ACAP by a court of competent jurisdiction or an administrative tribunal which orders repayment from nonfederal sources of federal funds determined to have been misspent, all means of further legal recourse have been exhausted or the time limits thereon have expired, and ACAP is unable to pay the judgment, then the parties to this amended agreement shall pay such judgment equally in proportion to their ACAP vote. However, if a party is found to be individually liable on any contract which it held with ACAP, by a court of competent jurisdiction or administrative tribunal and all means of further legal recourse have been exhausted or the time limits thereon

have expired, then that member is individually liable and responsible for payment of that debt unless it has been declared bankrupt or is otherwise prohibited by law from paying such debt in which case the remaining parties shall pay the debt, in accordance with the formula in the first sentence of this paragraph.

The signatories to this agreement are not liable for any funds misspent under CSBG.

B. Pursuant to Government Code section 6508.1, the debts, liabilities and obligations of ACAP shall be the debts, liabilities and obligations of the signatories to this agreement, to be shared equally.

C. ACAP agrees to hold harmless, indemnify, and to defend the ACAP members and their officers, employees and agents from any and all claims for injury or damage of whatever type brought by or on behalf of any third party, including, but not limited to, ACAP's officers, employees, and agents, arising from or connected with any acts or omissions in the performance of this agreement by ACAP except from any such claims arising solely out of acts or omissions attributable to the ACAP member or its officers, employees, or agents.

V. FISCAL CONTROL

A. Depository; Controller. Pursuant to Section 6505.6 of the California Government Code, the Board shall appoint one of its officers or employees to serve as either or both the treasurer and the auditor. The offices of auditor and treasurer may be held by separate officers or employees or combined and held by one officer or employee. Such person or persons shall comply with the duties and responsibilities of the treasurer and auditor as set forth in subdivisions (a) to (d), inclusive, of California Government Code Section 6505.5 and shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505.

B. Records and Reports. ACAP shall establish and maintain such funds and accounts as may be required by good accounting practice or by law. The books and records of ACAP shall be open to inspection at all reasonable times by representatives of any signatory to this agreement.

C. Inspection and Audit. Representatives of any of the signatories to this agreement shall at all times have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of ACAP.

D. Disposition of Assets; Surplus Money. Upon termination of this agreement all costs, expenses and charges legally incurred by ACAP shall be paid and discharged; and ACAP shall sell such property as may be necessary therefor and shall be distributed to the United States Government and/or the State of California such property and funds as are lawfully required, the balance of such property and any surplus money on hand shall be distributed or returned in proportion to contributions made by the effected parties except to the extent otherwise agreed upon by the affected parties.

E. Fiscal Year. Unless otherwise required by federal or state law, the fiscal year for ACAP shall be from January 1, to and including December 31.

VI. MISCELLANEOUS PROVISIONS

A. Indefinite Term. This agreement shall become effective upon execution by the signatories hereto and shall continue in full force and effect until terminated pursuant to this section.

B. Withdrawal Not Permitted. As ACAP's current purpose is to expeditiously wind up its affairs, the Members are not permitted to withdraw.

C. Termination. This Agreement shall terminate on the happening of either of the following events:

1. The governing boards of each of the Members approve the termination.

2. The entire Governing Board of ACAP unanimously adopts a resolution of termination stating: (a) that ACAP has been completely wound up; (b) that its known debts and liabilities have been actually paid or adequately provided for; (c) that the known assets of ACAP have been distributed to the persons entitled thereto after payment of known debts and liabilities; and (d) that ACAP is dissolved.

D. Amendments. This agreement may be amended at any time by the written agreement of the Members, as long as the amendment is not in conflict with applicable law.

E. Limitation of Power. Nothing contained in this agreement shall be construed to authorize any action which any signatory is not authorized by law to undertake.

F. Severability. Should any part, term, or provision of this agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

G. Reservation of Rights. By entering into this agreement, the purpose of which is to facilitate the orderly winding up of ACAP's affairs, none of the Members shall be deemed to be parties to the Original JPA nor shall any of the Members be deemed to have admitted responsibility for the debts, liabilities, and obligations of ACAP.

H. Submission of Notice to Secretary of State. Upon receipt of a fully executed copy of this agreement, ACAP shall prepare and file the notices with the Secretary of State and the State Controller required by Government Code sections 6503.5 and 6503.6.

[Execution Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their duly authorized signatories effective on or as of the date written at the commencement of this Agreement.

COUNTY OF ALAMEDA

CITY OF ALAMEDA

By: _____
Its: _____

By: _____
Its: _____

CITY OF ALBANY

CITY OF DUBLIN

By: _____
Its: _____

By: _____
Its: _____

CITY OF EMERYVILLE

CITY OF FREMONT

By: _____
Its: _____

By: _____
Its: _____

CITY OF HAYWARD

CITY OF LIVERMORE

By: _____
Its: _____

By: _____
Its: _____

CITY OF NEWARK

CITY OF PIEDMONT

By: _____
Its: _____

By: _____
Its: _____

CITY OF PLEASANTON

CITY OF SAN LEANDRO

By: _____
Its: _____

By: _____
Its: _____

CITY OF UNION CITY

By: _____
Its: _____